



UNITED STATES SENATE
**REPUBLICAN
POLICY COMMITTEE**

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Good For the Gander

**What Democrats Said When Their President
Was Nominating and Republicans
Controlled the Judiciary Committee**

Among the constitutional responsibilities entrusted to the Senate, none is more critical to the well-being of our democracy than providing advice and consent on Presidential nominations.

– Minority Leader Tom Daschle, March 8, 2000

No one will be here forever. All will leave at some time. When we leave, we can only look back and say: What kind of service did we give? Did we put the country's interests first? Or did we put partisan interest first? Did we put integrity first, or did we play behind the scenes and do things that were wrong?

– Ranking Judiciary Committee Member Patrick Leahy, September 21, 1999

One of the things that most Republicans and Democrats ought to be able to agree on is what [then-]Governor Bush said: Do it and vote them up or down in 60 days. Let's make a decision.

– Senator Leahy, July 25, 2000

On May 9, 2001, President Bush sent his first batch of judicial nominations to the Senate for consideration. One year later, 3 of the 11 nominees have been confirmed, the other 8 are yet to have even a hearing. Of the three that have been confirmed, two were Democrats who were previously nominated by President Clinton. Compare the record of this Senate with that of previous Senates: Presidents Clinton, G.H.W. Bush, and Reagan had 90, 93, and 98 percent, respectively, of their nominees confirmed during their first two years in office. This Senate has confirmed just over one-half of President Bush's nominees.

What follows is a collection of statements from the *Congressional Record* all made by Senate Democrats during the 106th Congress when their president was making the nominations and the

Republicans were in control of the Senate. It would seem that if Democrats stood by what they said then, that the current backlog of Bush judicial nominations would be nonexistent.

What Democrats Said About Vacancy Rates and Judicial Emergencies

[Note that as of May 9, 2002, the number of existing vacancies is 84 – 10.3 percent of the Federal Judiciary. Of the current vacancies, at least 35 (approximately 10 percent) are considered judicial emergencies. Of President Bush's 100 judicial nominations, 44 percent await Senate confirmation.]

- ▶ SEN. DASCHLE: One might assume we have no pressing need for Federal judges. In fact, just the opposite is true. Today, there are 76 vacancies on the Federal bench. Of those 76 vacancies, 29 have been empty so long they are officially classified as “judicial emergencies.” The failure to fill these vacancies is straining our Federal court system and delaying justice for people all across this country. This cannot continue. As Chief Justice Rehnquist warns, “Judicial vacancies cannot remain at such high levels indefinitely without eroding the quality of justice.” (S1255, 3/8/2000)
- ▶ SEN. LEAHY: I am challenging the Senate to regain the pace it met in 1998 when the committee held 13 hearings and the Senate confirmed 65 judges. . . . As it is, the vacancy rate is almost 10 percent . . . Especially troubling is the vacancy rate on the courts of appeals, which continues at 15 percent. (S588, 2/10/2000)
- ▶ SEN. LEAHY: We have 75 vacancies in the federal court. Prosecutors are under pressure all the time to move cases through because we have not confirmed the judges; we have not added the extra judges they need. The courts are backlogged. You cannot get civil cases heard because of all the criminal cases. (S1344, 3/9/2000)
- ▶ SEN. LEAHY: The Senate needs to consider judicial nominations promptly and to confirm without additional delay the many fine men and women President Clinton is sending us. . . . Unfortunately, past delays mean that 26 of the current vacancies, over 40 percent, are already judicial emergency vacancies. . . . (S2092, 3/2/99)
- ▶ SEN. LEAHY: The vacancies gap is not being closed. . . . Judicial vacancies now stand at approximately 8 percent of the Federal judiciary. (S11796, 10/1/99)
- ▶ SEN. DASCHLE: We have 34 nominees pending. There is no reason why every single one of them cannot be confirmed or at least considered in the next few months. (S1365, 3/9/2000)
- ▶ SEN. LEAHY: With 21 vacancies on the Federal appellate courts across the country, and nearly half of the total judicial emergency vacancies in the Federal courts systems in our appellate courts,

our courts of appeals are being denied the resources that they need. Their ability to administer justice for the American people is being hurt. (S6567, 7/12/2000)

- ▶ SEN. LEAHY: I note that the vacancy rate for our Courts of Appeals is more than 12 percent nationwide. . . . In the federal courts around the country there remain 63 current vacancies and several more on the horizon. . . . So long as the Senate is in session, I will urge action. (S9881-9882, 10/5/2000)

What Democrats Said About the Senate's Duty of Advice and Consent

- ▶ SEN. LEAHY: I hope we will have a chance to vote on them, not just in committee . . . but on the floor of the Senate. That is what the Constitution speaks of in our advise and consent capacity. That is what these good and decent people have a right to expect. That is what our oath of office should compel Members to do – to vote for or against. I do not question the judgement or conscience of any man or woman in this Senate if they vote differently that I do, but vote. (S11102, 9/21/99)
- ▶ SEN. SCHUMER: By not filling vacancies, we hamper the judiciary's ability to fulfill its own constitutional duties. . . . This delay makes a mockery of the Constitution, makes a mockery of the fact that we are here working, and makes a mockery of the lives of very sincere people who have put themselves forward to be judges and then they hang out there in limbo. (S1211, 3/7/2000)
- ▶ SEN. LEAHY: Acting to fill judicial vacancies is a constitutional duty that the Senate – and all of its members – are obligated to fulfill. In its unprecedented slowdown in the handling of nominees since the 104th Congress, the Senate is shirking its duty. That is wrong and it should end. (S7792, 6/29/99)
- ▶ SEN. KENNEDY: Over 200 years ago, the Framers of the Constitution created a system of checks and balances to ensure that excessive power is not concentrated in any branch of government. The President was given the authority to nominate federal judges with the advice and consent of the Senate. The clear intent was for the Senate to work with the President, not against him, in this process. (S1221, 3/7/2000)
- ▶ SEN. LEAHY: We must redouble our efforts to work with the President to end the longstanding vacancies that plague the federal courts and disadvantage all Americans. That is our constitutional responsibility. (S10544, 9/8/99)
- ▶ SEN. LEAHY: There are only 100 of us who are elected to represent a quarter of a billion Americans. . . . Let us not play silly parliamentary games and tell the American people we do not have the guts to vote . . . (S1331, 3/8/2000)
- ▶ SEN. REED: This is one of our enumerated duties in the Constitution. . . . I ask my colleagues to take their constitutional duty seriously and vote for these nominees on the basis of their objective

qualifications, and not on the basis of petty politics. This process is much too important to the citizens of this great democracy to do otherwise. (S1356-1357, 3/9/2000)

- ▶ SEN. LEAHY: One of our most important constitutional responsibilities as United States Senators is to advise and consent on the scores of judicial nominations sent to us to fill the vacancies on the federal courts around the country. I continue to urge the Senate to meet its responsibilities to all nominees. . . . We must redouble our efforts That is our constitutional responsibility. It should not be shirked. (S7532-7534, 7/25/2000)

What Democrats Said About Treatment of Nominees

- ▶ SEN. LEAHY: The American people should measure our progress by our treatment of the many qualified nominees . . . to the Courts of Appeals around the country. . . . That all of these highly qualified nominees are being needlessly delayed is most regrettable. The Senate should join with the President to confirm these well-qualified, diverse, and fair-minded nominees to fulfill the needs of the Federal courts around the country. (S6567-6568, 7/12/2000)
- ▶ SEN. LEAHY: We are not being responsible. We are being dishonest, condescending, and arrogant toward the judiciary. It deserves better and the American people deserve better. . . . Nominees deserve to be treated with dignity and dispatch. . . . We are seeing outstanding nominees nitpicked and delayed to the point that good women and men are being deterred from seeking to serve as federal judges. (S10544, 9/8/99)
- ▶ SEN. KENNEDY: Many of us have been concerned about the Senate's continuing delays in acting on President Clinton's nominees to the federal courts This kind of partisan, Republican stonewalling is irresponsible and unacceptable. It's hurting the courts and it's hurting the country. . . . The continuing delays are a gross perversion of the confirmation process that has served this country well for more than 200 years. When the Founders wrote the Constitution and gave the Senate the power of advice and consent on Presidential nominations, they never intended the Senate to work against the President. . . . (S11102, 9/21/99)
- ▶ SEN. LEAHY: We should be the conscience of the Nation. On some occasions we have been. But we tarnish the conscience of this great Nation if we establish the precedence of partisanship and rancor that go against all precedents and set the Senate on a course of meanness and smallness For the last several years, I have been urging the Judiciary Committee and the Senate to proceed to consider and confirm judicial nominees more promptly, without the months of delay that now accompany so many nominations. (S11795-11796, 10/1/99)
- ▶ SEN. LEVIN: To keep these nominees pending for so long without hearings is unfair to the nominees, particularly where there is no known objection and where there is no explanation for the refusal to grant hearings. . . . We should also focus on nominees pending in the Judiciary Committee, awaiting hearings or awaiting a vote by the committee after a hearing, who are left there no matter how long they have been waiting. . . . (S9661-9662, 10/3/2000)

- ▶ SEN. LEAHY: Nominees practicing law see their work put on hold while they await the outcome of their nominations. Their families cannot plan. They are left to twist in the wind. (S8935, 9/21/2000)

What Democrats Said About Time for Considering Nominees

- ▶ SEN. LEAHY: All the talk about needing six months or more to process and review nominees is just that – talk. (S7531, 7/25/2000)
- ▶ SEN. LEAHY: The Judiciary Committee needs to do a better job and the Senate needs to proceed more promptly to consider nominees reported to it. . . . The Senate needs to consider judicial nominations promptly and to confirm without additional delay the many fine men and women President Clinton is sending us. (S3671, 4/14/99)
- ▶ SEN. DASCHLE: I believe there is a time and a place for us to consider any nominee and, once having done so, we need to get on with it. I cannot imagine that anybody could justify, anybody could rationalize, anybody could explain why, in the name of public service, we would put anyone through the misery and the extraordinary anguish that these nominees have had to face for years. Why would anyone ever offer themselves for public service . . . ? (S1365, 3/9/2000)
- ▶ SEN. LEVIN: The Judiciary Committee held hearings for three of the nominees and approved those nominations less than a week after the nominations were received. Other nominees wait in vain for years just for a hearing. That strikes me as being an arbitrary and inexplicable system, unfair to nominees . . . and unfair to the districts or the circuits in which they would serve if confirmed. I believe it is also unfair – perhaps this is most important of all – to the people who await justice in their courts. (S9661, 10/3/2000)
- ▶ SEN. LEAHY: [Judge Julio Fuentes'] nomination has already been pending for over seven months. He should get a hearing and prompt consideration. (S12689, 10/15/99)
- ▶ SEN. LEAHY: If I could make a recommendation, I would join an unusual ally in that. Gov. George W. Bush of Texas [stated that] presidential nominations should be acted upon by the Senate within 60 days. He said: 'The Constitution . . . does not empower anyone to turn the process into a protracted ordeal of unreasonable delay and unrelenting investigation. Yet somewhere along the way, that is what Senate confirmations became – lengthy, partisan, and unpleasant. It has done enough harm, injured too many good people, and it must not happen again.' Governor Bush is right. . . . I have said the same thing. (S7437, 7/21/2000)

- ▶ SEN. HARKIN: I hope the Judiciary Committee and the leadership on that side. . .will listen to the words of Texas Governor George Bush. He said he would call for a 60-day deadline for judges – once they are nominated, the Senate will have 60 days to hold a hearing, to report out of committee and vote on the Senate floor. . . . If he said he would call for a 60-day deadline, I ask my friends on the Republican side: Why don't we act accordingly? (S9664-9665, 10/3/2000)

What Democrats Said About Affording Judicial Nominees a Vote

- ▶ SEN. HARKIN: There are 22 vacancies in our federal appeals courts These positions should be filled with qualified individuals as soon as possible. I urge the Republican leadership to take the steps necessary to allow the full Senate to vote up or down on these important nominations. (S9664, 10/3/2000)
- ▶ SEN. LEAHY: Let us find a way to tell these nominees they will get a vote one way or the other. I am not asking anybody how they should or should not vote but allow nominees to have a vote. All the people being nominated are extremely highly qualified lawyers and judges. They have to put their lives on hold and the lives of their families on hold while they wait. . . . Vote them up, vote them down. (S11102, 9/21/99)
- ▶ SEN. DASCHLE: It is important that all of the nominees who are pending before the Judiciary Committee be considered. (s11789, 10/1/99)
- ▶ SEN. DASCHLE: The Republican majority should not be allowed to cherry-pick among nominees, allowing some to be confirmed in weeks, while letting other nominations languish for years. . . . Let the Senate vote on every nomination. (S11919, 10/5/99)
- ▶ SEN. LEAHY: When we hold a nominee up by not allowing them a vote and not taking any action one way or the other, we are not only voting "maybe" but we are doing a terrible disservice to the man or woman to whom we do this. They have to put their life on hold. They do not know what is going to happen: Are they going to be confirmed, or not? (S9672, 10/3/2000)
- ▶ SEN. LEAHY: Either vote for them or vote against them. Don't leave people . . . just hanging forever with even getting a rollcall vote. That is wrong. It is not a responsible way and besmirches the Senate. . . . (S9881-9882, 10/5/2000)

What Democrats Said About Leadership Allowing a Controversial Vote

- ▶ SEN. LEAHY: The distinguished chairman of the Senate Judiciary Committee deserves great credit for having gotten these nominees through our committee, notwithstanding opposition from

some members of his own party, and for having gotten them onto the floor and on the calendar. (S11102, 9/21/99)

- ▶ SEN. REED: I also recognize Senator Lott for making a commitment to bring the Paez and Berzon nominations to the Floor for a vote by March 15, over the protests of certain members of his caucus. (S1356, 3/9/2000)
- ▶ SEN. DASCHLE: I thank the majority leader. He and I have talked about this on several occasions, and it is never easy when you have dissent within your own caucus to make decisions. He made a commitment last year, and he held to that commitment this year. He said we would have these votes, up or down, on the confirmation of these two judicial nominees before the 15th of March, and we are going to do that. I publicly thank him and commend him for holding to that commitment. It is not easy. He has done a difficult thing, but he has done it. (S1366, 3/9/2000)

What Democrats Said About Fairness Versus Retribution

- ▶ SEN. DASCHLE: There is going to be no payback. We are not going to do to Republican nominees, whenever that happens, what they have done to Democratic nominees. Why? Because it is not right. Will we differ? Absolutely. Will we have votes and vote against nominees on the basis of whatever we choose? Absolutely. But are we going to make them wait for years and years to get their fair opportunity to be voted on and considered? Absolutely not. That is not right. I do not care who is in charge. I do not care which President is making the nomination. That is not right. (S1365, 3/9/2000)
- ▶ SEN. HARKIN: Politics; pure rank politics. That is what is going on in the Judiciary Committee today. I hope it won't be that way if the Democrats take charge of the Senate. I am not on the Judiciary Committee, but we tend to get in what I call a "cesspool spiral," like a whirlpool. One side takes over the majority and begins to stall nominations, and then the other side takes over, we keep spiraling down further and further to the point where any nominee for a federal court will be held up months and perhaps even years while we await the next election. Then our third branch of government truly becomes a political football. (S9664-9665, 10/3/2000)

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